

REMARKS

[0003] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1, 4-7, 11-16, 19-21, 25-29, 42-46, 50, 52-55, 59 and 61-63 are presently pending. Claims amended herein are 1, 4-7, 11, 25, 42, 50, 52-55, and 59. Claims cancelled herein are 3 and 51. No new claims are added herein.

Statement of Substance of Interview

[0004] The Examiner graciously talked with me—the undersigned representative for the Applicant—on October 17, 2008. Applicant greatly appreciates the Examiner’s willingness to talk. Such willingness is invaluable to both of us in our common goal of an expedited prosecution of this patent application.

[0005] During the interview, I discussed how the claims differed from the cited references, namely Pradilla, Computing.net, Sun, and Pawlak. Without conceding the propriety of the rejections and in the interest of expediting prosecution, I also proposed several possible clarifying amendments.

[0006] The Examiner was receptive to the proposals. However, the Examiner indicated that he would need to review the cited art more carefully and do another search, and requested that the proposed amendments be presented in writing.

[0007] Applicant herein amends the claims in the manner discussed during the interview. Accordingly, Applicant submits that the pending claims are allowable over the cited art of record for at least the reasons discussed during the interview.

Formal Request for an Interview

[0008] If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can talk about this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0009] Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for me, I welcome your call as well. My contact information may be found on the last page of this response.

Claim Amendments

[0010] Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claims 1, 4-7, 11, 25, 42, 50, 52-55, and 59 herein. Applicant amends claims to clarify claimed features. Such amendments are made to expedite prosecution and more quickly identify allowable subject matter. Such amendments are merely intended to clarify the claimed features, and should not be construed as further limiting the claimed invention in response to the cited references.

Substantive Matters

Claim Rejections under § 103

[0011] The Examiner rejects claims 1, 3-7, 11-16, 19-21, 25-29, 42-46, 50-55, 59 and 61-63 under § 103. For the reasons set forth below, the Examiner has not made a prima facie case showing that the rejected claims are obvious.

[0012] Accordingly, Applicant respectfully requests that the § 103 rejections be withdrawn and the case be passed along to issuance.

[0013] The Examiner's rejections are based upon the following references in combination or sub-combination:

- **Pradilla:** "Operating System Installation", 1996, ICTP – The Abdus Salam International Centre for Theoretical Physics, Trieste, Italy;
- **Computing.net:** "Installing a New Operating System", 2002, <http://www.computing.net/answers/windows-me/installing-a-new-operating-system/17954.html>; and
- **Sun:** "JumpStart™ Mechanics: Using JumpStart Applications for Hands-Free Installation of Unbundled Software" (Parts 1 and 2) and "Upgrading to the Solaris™ 8 Operating Environment."
- **Pawlak:** "Software Update Service to Ease Patch Distribution", DirectiononMicrosoft.com

Overview of the Application

[0014] The Application describes a technology for remotely managing operating system deployments. Various features can allow a system

administrator to plan and schedule operating system or image deployment on various computers or machines throughout an organization. Planning and scheduling image deployment, in accordance with the various systems and methods described below, can take place in bandwidth-sensitive environments and are easily scalable. Various embodiments can provide an imaging process that seamlessly migrates data or state (e.g. machine/client/user data and state) to a newly-imaged operating system. In addition, at least some embodiments can provide end users with flexibility to alter the behavior of the image deployment within policies that are specified by the system administrator. Additional embodiments provide a rich mechanism by which status reports are generated and sent to the system administrator to assist them in managing the deployment. Further embodiments can conduct operating system deployment *in-place*, meaning that additional disk partitions are not required.

Cited References

[0015] The Examiner cites Pradilla as the primary reference in the obviousness-based rejections. The Examiner cites Computing.net, Sun, and Pawlak as secondary references in the obviousness-based rejections.

Pradilla

[0016] Pradilla describes the installation of Windows and Linux operating systems on different partitions.

Computing.net

[0017] Computing.net describes how to install a new Windows ME operating system.

Sun

[0018] Sun is a set of user guides for the Sun JumpStart™ application (for automating software installation) and for upgrading to the Solaris™ 8 operating environment.

Pawlak

[0019] Pawlak describes a software update service for ease Microsoft patch distribution.

Obviousness Rejections

Lack of *Prima Facie* Case of Obviousness (MPEP § 2142)

[0020] Applicant disagrees with the Examiner's obviousness rejections. Arguments presented herein point to various aspects of the record to demonstrate that all of the criteria set forth for making a prima facie case have not been met.

Based upon Pradilla and Computing.net

[0021] The Examiner rejects claims 1 and 3-7 under 35 U.S.C. § 103(a) as being unpatentable over Pradilla and Computing.net. Applicant respectfully traverses the rejection of these claims and asks the Examiner to withdraw the rejection of these claims.

Independent Claim 1

[0022] Applicant submits that the combination of Pradilla and Computing.net does not teach or suggest at least the following features as recited in this claim (with emphasis added):

- ***"capturing data or state for migration to a new operating system and storing the data or state at a remote network location"***
- ***"installing a pre-installation environment*** on a target computer that is desired to be imaged with the new operating system, the pre-

installation environment comprising a subset of an operating system, wherein the act of installing the pre-installation environment comprises ***installing the pre-installation environment in a same disk partition as an old operating system***"

- "deleting the old operating system ***from within the pre-installation environment***"
- "installing the new operating system ***from within the pre-installation environment***, wherein the new operating system is deployed in the same disk partition as the old operating system"

[0023] In contrast, the primary reference (Pradilla) describes the installation of a Windows 95 OS and a Linux OS. Pradilla describes a method of installation which includes creating partitions on a hard drive and installing the operating systems in those partitions. The Examiner cites a second reference (Computing.net) as teaching that a new OS can be installed to replace an "old"/existing OS.

[0024] Neither reference teaches or suggests a "pre-installation environment" which comprises "a subset of an operating system." The portion of Padilla cited by the Examiner as teaching a "pre-installation environment" - the "Requirement" section - makes no mention of a "subset of an operating system." Also, the combined references do not suggest installing a pre-installation environment, much less installing such an environment "in a same disk partition as an old operating system", as recited by amended claim 1. Further, the references do not teach or suggest deleting the old OS ***from within*** the pre-installation environment. The

portion of Pradilla cited as teaching the deleting - the "Windows 95 Installation" section - makes no mention of deleting an old operating system.

[0025] Additionally, the combined references do not teach or suggest "capturing data or state ... and storing the data or state at a remote network location", as recited in amended claim 1. These new features (the capturing and storing) are similar to features rejected by the Examiner in claim 3. In rejecting claim 3, the Examiner cites page 3 of Pradilla. Nowhere in that page, however, is reference made to capturing data or state and storing the data or state at a remote network location. Also, Computing.net makes no mention to preserving data or state, or even to the desirability of preserving any sort of data or state of an old operating system. Thus, Pradilla and Computing.net simply do not teach or suggest "capturing data or state for migration to a new operating system and storing the data or state at a remote network location."

[0026] As shown above, the combination of Pradilla and Computing.net does not teach or suggest all of the elements and features of this claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Dependent Claims 3-7

[0027] Claim 3 is cancelled, obviating its rejection.

[0028] Claims 4-7 ultimately depend upon independent claim 1. As discussed above, claim 1 is allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally,

some or all of these claims may also be allowable for additional independent reasons.

Based upon Pradilla, Computing.net, and Sun

[0029] The Examiner rejects claims 11-16, 19-21 59, and 61-63 under 35 U.S.C. § 103(a) as being unpatentable over Pradilla, Computing.net, and Sun. Applicant respectfully traverses the rejection of these claims and asks the Examiner to withdraw the rejection of these claims.

Independent Claim 11 and 59

[0030] Sun is not cited as teaching the above-discussed recitations of claim 1 and thus does not cure the deficiencies of Pradilla and Computing.net. Thus, claim 1 remains patentable even when Sun is combined with Pradilla and Computing.net.

[0031] Claims 11 and 59 include recitations similar to those discussed above with regard to claim 1. Thus, claims 11 and 59 are patentable over Pradilla, Computing.net, and Sun for at least the same reasons that claim 1 is.

Dependent Claims 12-16, 19-21, and 61-63

[0032] These claims ultimately depend upon independent claims 11 and 59. As discussed above, claims 11 and 59 are allowable. It is axiomatic that any

dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

[0033] Additionally, claim 21 recites, in part, “wherein the multi-phase image deployment process is configured to generate status reports ... wherein status reports are generated by an old client associated with the old operating system, and a new client associated with the new operating system.” None of the cited references teach an “old client associated with the old operating system” or a “new client associated with the new operating system”, much less reports generated by such clients. The “syslog” of Sun cited by the Examiner, is not disclosed as including such old and new clients associated respectively with the old and new operating systems. Thus, for at least this additional reason, claim 21 is patentable over the combined references.

Based upon Pradilla, Computing.net, and Pawlak

[0034] The Examiner rejects claims 25-29, 42-46, and 50-55 under 35 U.S.C. § 103(a) as being unpatentable over Pradilla, Computing.net, and Pawlak. Applicant respectfully traverses the rejection of these claims and asks the Examiner to withdraw the rejection of these claims.

Independent Claim 25, 42, and 50

[0035] Pawlak is not cited as teaching the above-discussed recitations of claim 1 and thus does not cure the deficiencies of Pradilla and Computing.net. Thus, claim 1 remains patentable even when Pawlak is combined with Pradilla and Computing.net.

[0036] Claims 25, 42, and 50 include recitations similar to those discussed above with regard to claim 1. Thus, claims 25, 42, and 50 are patentable over Pradilla, Computing.net, and Pawlak for at least the same reasons that claim 1 is.

Dependent Claims 26-29, 43-46, and 51-55

[0037] Claim 51 is cancelled, obviating its rejection.

[0038] Claims 26-29, 43-46, and 52-55 ultimately depend upon independent claims 25, 42, and 50. As discussed above, claims 25, 42, and 50 are allowable. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable. Additionally, some or all of these claims may also be allowable for additional independent reasons.

Conclusion

[0039] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action.** Please call or email me at your convenience.

Respectfully Submitted,

Lee & Hayes, PLLC
Representatives for Applicant

/Robert C. Peck/

Dated: October 30, 2008

Kasey C. Christie (kasey@leehayes.com; x4732)

Registration No. 40559

Robert C. Peck (robp@leehayes.com; 425-677-5750)

Registration No. 56826

Customer No. **22801**

Telephone: (509) 324-9256

Facsimile: (509) 323-8979

www.leehayes.com